

19.1	Court's Options Following Convictions in Designated Case Proceedings.....	422
19.2	Factors to Determine Whether to Impose a Juvenile Disposition or Adult Sentence.....	423
19.3	Hearing Procedures .....	424
19.4	Offenses for Which Juveniles May Be Sentenced to Prison.....	425
19.5	Offenses for Which Adult Probation May Be Ordered .....	426
19.6	Requirements for Imposing Jail Sentences.....	426
19.7	Required Procedures for Delayed Imposition of Adult Sentences.....	427

### **In this chapter. . .**

This chapter discusses the court's options following conviction in a designated case proceeding. Following conviction, a Family Division judge may order a juvenile disposition, impose a sentence in the same manner as an adult, or order an "adult sentence" but delay imposition of that sentence. Different procedural rules apply depending upon the court's decision.

A comparison of waiver and designated case proceedings may be found in Section 1.6. Discussion of the rules governing juvenile dispositions is contained in Chapter 10. For case law on the decision to sentence a juvenile as an adult in "automatic waiver" proceedings, see Section 21.3.

**Note on court rules.** On February 4, 2003, the Michigan Supreme Court approved extensive amendments to Subchapter 5.900 of the Michigan Court Rules, which govern delinquency, minor PPO, designated case, and "traditional waiver" proceedings, and to Subchapter 6.900, which govern "automatic waiver" proceedings. Subchapter 5.900 was renumbered Subchapter 3.900. These rule amendments are effective May 1, 2003. Although not in effect on the publication date of this benchbook, the rule amendments have been included here. For the rules in effect prior to May 1, 2003, see the first edition of this benchbook, *Juvenile Justice Benchbook: Delinquency & Criminal Proceedings* (MJJ, 1998).

## 19.1 Court's Options Following Convictions in Designated Case Proceedings

\*See Section 4.3 for the applicability of the Crime Victim's Rights Act.

MCL 712A.2d(8) provides that following a judgment of conviction in a designated case, the court must enter a disposition or impose a sentence authorized under MCL 712A.18(1)(n). See also MCR 3.955(A), which states in part that “[i]f a juvenile is convicted under MCL 712A.2d, sentencing or disposition shall be made as provided in MCL 712A.18(1)(n) and the Crime Victim's Rights Act, MCL 780.751 et seq., if applicable.”\*

MCL 712A.18(1)(n) states in relevant part:

\*See Section 23.4 for a discussion of this alternative sentence.

“If the court entered a judgment of conviction under section 2d of this chapter, [the court may] enter any disposition under this section or, if the court determines that the best interests of the public would be served, impose any sentence upon the juvenile that could be imposed upon an adult convicted of the offense for which the juvenile was convicted. If the juvenile is convicted of a violation or conspiracy to commit a violation of [MCL 7403(2)(a)(i)], the court may impose the alternative sentence permitted under that section if the court determines that the best interests of the public would be served.\* The court may delay imposing a sentence of imprisonment under this subdivision for a period not longer than the period during which the court has jurisdiction over the juvenile under this chapter by entering an order of disposition delaying imposition of sentence and placing the juvenile on probation upon the terms and conditions it considers appropriate, including any disposition under this section. If the court delays imposing sentence under this section, section 18i of this chapter applies. If the court imposes sentence, it shall enter a judgment of sentence. If the court imposes a sentence of imprisonment, the juvenile shall receive credit against the sentence for time served before sentencing.

Thus, MCL 712A.18(1)(n) allows the court to:

\*See Section 19.3, below, and Chapter 10.

- enter any disposition allowed under MCL 712A.18;\* or
- if the court determines that the best interests of the public would be served, impose any sentence, including probation or an alternative sentence provided by statute, upon the juvenile that could be imposed upon an adult convicted of the same offense;\* or

\*See Sections 19.3–19.6, below, and Chapter 23.

- delay imposing a sentence of imprisonment while the court has jurisdiction over the juvenile by entering an order of disposition delaying imposition of sentence and placing the juvenile on probation upon the terms and conditions it considers appropriate, including any disposition allowed under MCL 712A.18.\*

\*See Section 19.7, below, and Chapter 22.

MCR 3.903(D)(7) defines sentencing, in the context of designated case proceedings, as the imposition of any sanction on a juvenile that could be imposed on an adult convicted of the same offense, or the decision to delay the imposition of such a sanction. Thus, the definition excludes juvenile dispositions.

## 19.2 Factors to Determine Whether to Impose a Juvenile Disposition or Adult Sentence

MCL 712A.18(1)(n) states in relevant part:

“In determining whether to enter an order of disposition or impose a sentence under this subdivision, the court shall consider all of the following factors, giving greater weight to the seriousness of the offense and the juvenile’s prior record:

(i) The seriousness of the offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines, the use of a firearm or other dangerous weapon, and the impact on any victim.

(ii) The juvenile’s culpability in committing the offense, including, but not limited to, the level of the juvenile’s participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines.

(iii) The juvenile’s prior record of delinquency including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior.

(iv) The juvenile’s programming history, including, but not limited to, the juvenile’s past willingness to participate meaningfully in available programming.

(v) The adequacy of the punishment or programming available in the juvenile justice system.

(vi) The dispositional options available for the juvenile.”

MCR 3.955(A)(1)–(6) contain substantially similar criteria.

Although MCL 712A.18(1)(n) requires a court to consider the factors listed in that statute but does not require factual findings on each factor, the Court of Appeals has made such factual findings a requirement of meaningful review. See *People v Passeno*, 195 Mich App 91, 103 (1992), overruled on other grounds 229 Mich App 218 (1998), and *People v Miller*, 199 Mich App 609, 612 (1993). The court must “sort the logical, reasonable, and believable evidence on the record from the incredible or irrelevant,” and based on these findings, “consider and balance all the [statutory] factors to decide whether to sentence a defendant as a juvenile or adult.” *People v Thenghkam*, 240 Mich App 29, 67 (2000), citing *People v Cheeks*, 216 Mich App 470, 478–79 (1996).

## 19.3 Hearing Procedures

**Time requirements.** No time requirement is specified in the applicable statutes or court rules for the court’s decision on whether to sentence the juvenile as an adult or to order a juvenile disposition. However, a sentencing hearing must be held within a reasonably prompt time after the plea or verdict, MCR 6.425(D)(2), and a dispositional hearing must be held within 35 days of the plea or adjudication if the juvenile is detained or the juvenile must be released, MCR 3.943(B). Thus, the court should determine whether it will order a disposition or impose a sentence within a period that would permit the court to comply with these requirements.

**Standard and burden of proof.** MCR 3.955(B) states:

“The court shall enter an order of disposition unless the court determines that the best interests of the public would be served by sentencing the juvenile as an adult. The prosecuting attorney has the burden of proving by a preponderance of the evidence that, on the basis of the criteria listed [in Section 19.2, above,] it would be in the best interests of the public to sentence the juvenile as an adult.”

**Disposition or sentencing hearing.** If the court does not determine that the juvenile should be sentenced as an adult, the court must hold a dispositional hearing and comply with the procedures in MCR 3.943. MCR 3.955(E). If the court determines that the juvenile should be sentenced as an adult, either

initially or following delayed imposition of sentence, the sentencing hearing must be held in accordance with MCR 6.425. MCR 3.955(C).

**Reports.** An FIA Juvenile Justice Specialist and Department of Corrections Probation Officer will typically prepare Presentence Information Reports. See MCL 771.14, MCL 771.14a, MCL 803.224, and FIA *Services Manual*, Item 812.1.

**Judges who may preside at a sentencing hearing.** A judge must preside at a sentencing in a designated case. MCR 3.912(A)(3). “The juvenile has the right to demand that the same judge who accepted the plea or presided at the trial of a designated case preside at sentencing or delayed imposition of sentence, but not at a juvenile disposition of the designated case.” MCR 3.912(C)(2).

**Entering a judgment of sentence and granting credit for time served before sentencing.** “If the court imposes sentence, it shall enter a judgment of sentence. If the court imposes a sentence of imprisonment, the juvenile shall receive credit against the sentence for time served before sentencing.” MCL 712A.18(1)(n).\*

\*See SCAO Forms JC 71 and 72. See Section 23.2 for a discussion of credit for time served before sentencing.

## 19.4 Offenses for Which Juveniles May Be Sentenced to Prison

Juveniles convicted of specified juvenile violations\* and sentenced under MCL 712A.18(1)(n) may be committed to the Department of Corrections. MCL 712A.18h states:

“A juvenile sentenced to imprisonment under section 18(1)(n) of this chapter shall not be committed to the jurisdiction of the department of corrections. This section does not apply if the juvenile was convicted of a specified juvenile violation as defined in section 2d of this chapter.”

A juvenile may also be sentenced to prison for a lesser-included offense of a specified juvenile violation, or for any other offense arising out of the same transaction, if the juvenile was charged with a specified juvenile violation. Consequently, prison is an option for all prosecutor-designated cases, but is not initially an option in court-designated cases.

MCL 712A.18h states that juveniles “sentenced to imprisonment under section 18(1)(n) of this chapter shall not be committed to the jurisdiction of the department of corrections.” This limitation does not apply to juveniles convicted of specified juvenile violations. *Id.* Because MCL 712A.18(1)(n) deals with the initial decision to impose or delay imposition of sentence, it is unclear whether juveniles may be committed to the Department of Corrections during the delay in imposition of sentence.

\*See Section 17.1(A) for the list of specified juvenile violations.

When imposition of an adult sentence has been delayed, the court may impose sentence at any time during the delay under MCL 712A.18i, and section (11) of that statute contemplates a sentence of imprisonment. Thus, it appears that commitment to the Department of Corrections is a sentencing option in court-designated cases during the period that the court has jurisdiction over the juvenile.

## 19.5 Offenses for Which Adult Probation May Be Ordered

The court may place the juvenile on adult probation when allowed by law. See, however, MCL 771.1 (adult probation precluded for murder, first- or third-degree criminal sexual conduct, armed robbery, and major controlled substance offenses other than MCL 333.7401(2)(a)(iv) or 333.7403(2)(a)(iv)), and *People v Blyth*, 417 Mich 430, 435–36 (1983) (Court’s interpretation of the phrase “life or any term of years” to require imprisonment may preclude probation for assault with intent to murder, assault with intent to commit armed robbery, attempted murder, kidnapping, carjacking, bank, safe, or vault robbery, or conspiracy to commit these offenses).

If the court, following conviction in a designated case, imposes a sentence of probation in the same manner as probation could be imposed upon an adult convicted of the same offense for which the juvenile was convicted, the probation supervision and related services shall not be performed by employees of the Department of Corrections. MCL 712A.9a. In such cases, probation supervision and related services will be performed by Family Division probation officers or by Family Independence Agency delinquency workers.

## 19.6 Requirements for Imposing Jail Sentences

MCL 769.28 requires a person sentenced to one year or less to serve that sentence in a county jail rather than a state institution. MCL 712A.18(16) states:

“The court shall not impose a sentence of imprisonment in the county jail under [MCL 712A.18(1)(n)] unless the present county jail facility for the juvenile’s imprisonment would meet all requirements under federal law and regulations for housing juveniles. The court shall not impose the sentence until it consults with the sheriff to determine when the sentence will begin to ensure that space will be available for the juvenile.”\*

\*For limitations on jailing juveniles under state law, see Sections 3.7 and 3.9. For federal requirements regarding facilities, see 42 USC 5601 et seq and 28 CFR 31.303.

## 19.7 Required Procedures for Delayed Imposition of Adult Sentences

MCL 712A.18(1)(n) states in relevant part:

“The court may delay imposing a sentence of imprisonment under this subdivision for a period not longer than the period during which the court has jurisdiction over the juvenile under this chapter by entering an order of disposition delaying imposition of sentence and placing the juvenile on probation upon the terms and conditions it considers appropriate, including any disposition under this section.\* If the court delays imposing sentence under this section, section 18i of this chapter applies. If the court imposes sentence, it shall enter a judgment of sentence. If the court imposes a sentence of imprisonment, the juvenile shall receive credit against the sentence for time served before sentencing.”

\*See SCAO  
Forms JC 73  
and 74.

See also MCR 3.955(D), which states:

“If the court determines that the juvenile should be sentenced as an adult, the court may, in its discretion, enter an order of disposition delaying imposition of sentence and placing the juvenile on probation on such terms and conditions as it considers appropriate, including ordering any disposition under MCL 712A.18. A delayed sentence may be imposed in accordance with MCR 3.956.”

According to MCL 712A.18i(1), a delay in sentencing does not deprive the court of jurisdiction to sentence the juvenile under MCL 712A.18(1)(n) at any time during the delay.\*

If the court, following conviction in a designated case, enters an order of disposition delaying imposition of sentence and placing the juvenile on probation, the probation supervision and related services shall not be performed by employees of the Department of Corrections. MCL 712A.9a. In such cases, probation supervision and related services will be performed by Family Division probation officers or by Family Independence Agency delinquency workers.

\*See Chapter  
22 for a  
complete  
discussion of  
the review of  
delayed  
sentences.